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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/072,437	02/05/2002	Thomas B. Bolt	Q02-1032-US1/11198.85	2631

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EXAMINER

WOO, ISAAC M

ART UNIT	PAPER NUMBER
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2172

DATE MAILED: 07/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/072,437

Applicant(s)

BOLT, THOMAS B.

Examiner

Isaac M Woo

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 2.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-22 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "A method" in claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 2-11, dependent on claim 1, are rejected.

Claim 12 recites the limitation "A apparatus" in claim. There is insufficient antecedent basis for this limitation in the claim.

Claims 13-22, dependent on claim 12, are rejected.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-22 are rejected under 35 U.S.C. 101 because the claim invention is directed to non-statutory subject matter.

MPEP 2106 IV. B.2. (b)

A claim that requires one or more acts to be performed defined a process. However, not all processes are statutory under 35 U.S.C. 101. Schrader, 22 F. 3d at 296, 30 USPQd at 1460. To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer for which a practical application in the technological arts is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application within the technological arts.

MPEP 2106. II.A

Process that consists solely of the maculation of an abstract idea not concrete or tangible. See In re Warmerdam, 33 F3d 1354, 1360, 31 USPQ2d 1754, 1759 (Fed. Cir. 1994).

Claims 1-22, in view of the above cited MPEP sections, are not statutory because they merely recite a number of computing steps without producing any tangible result and/or being limited to practical application within the technological arts. The use of a computer has not been indicated.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodhill et al (U.S. Patent No. 5,649,196, hereinafter, "Woodhill").

With respect to claims 1 and 12, Woodhill discloses defining a duty cycle for the downloading of data to a backup storage device, the duty cycle having a backup window period, see (col. 3, lines 63-67 to col. 4, lines 1-47, col. 5, lines 12-45); receiving data during the backup window period, see (fig. 5a, col. 5, lines 13-67 to col. 6, lines 1-40); storing the data on the backup storage device during the backup window period, see (fig. 5b, col. 9, lines 30-67 to col. 10, lines 1-44); retrieving the data stored on the backup storage device after the backup window period, see (col. 11, lines 6-67 to col. 12, lines 1-54); compressing the data retrieved from the backup storage device, see (col. 11, lines 6-67 to col. 12, lines 1-54); and re-storing the data compressed in compressed form on the backup storage device to reclaim space on the storage device, see (fig. 5e, fig. 5f, col. 11, lines 6-67 to col. 12, lines 1-67 to col. 13, lines 1-67 to col. 14, lines 1-51). Woodhill does not explicitly disclose an idle period. However, disclosed system of Woodhill is backup/compression and retrieval system (col. 2, lines 20-49, col. 11, lines 7-67 to col. 12, lines 1-54). Woodhill discloses "The Distributed Storage Manager program 24 can either be executed on user demand or can be set to execute periodically on a user-defined schedule" see (col. 5, lines 1-10), "Backup cycle Identifier 46 (identifies the backup cycle during which the backup Instance Record 42 is created); (3) File Size 48; (4) Last Modified Date/Time 50; (5) Last Access Date/Time 52; (6) File Attributes 54 (e.g., read-only, system, hidden); (7) Delete Date 56 (date on which the file

was deleted); and (8) Insert Date 57 (date on which the Backup Instance Record 42 was created), see (col. 4, lines 12-47). This teaches the user defines backup cycle that includes backup period and idle period. Therefore, it would have been obvious to a person having ordinary skill in the art at the time of the invention was made to include the idle period. Because the idle time for scheduling backup provides efficient backup procedures.

With respect claims 2 and 13, Woodhill discloses that compression of data is performed using a software data compression algorithm, see (col. 11, lines 6-67 to col. 12, lines 1-54).

With respect claims 3 and 14, Woodhill discloses that data compression algorithm includes one of the following types of algorithms: a zip; a gunzip; a bzip; a b2zip; a Lempel Ziv; and a LZS (Lempel Ziv Stac), see (col. 11, lines 6-67 to col. 12, lines 1-54).

With respect claim 4, Woodhill discloses that comprising successively repeating the receiving and storing of data during the backup window periods and retrieving, compressing and storing compressed data on the backup storage device during successive duty cycles respectively, see (col. 5, lines 1-10, col. 4, lines 12-47).

With respect claim 5, Woodhill discloses that the backup storage device is an emulated tape drive containing an array of hard drives, see (col. 1, lines 26-67 to col. 2, lines 1-45).

With respect claims 6-8, 11 and 19-20, Woodhill discloses that data is downloaded over a fiber channel, Ethernet network connection between a primary storage location and backup storage device, see (fig. 1, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claims 9-10, Woodhill discloses that primary storage location and the backup storage device are part of a storage array network attached configuration, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 11, Woodhill discloses that primary storage location and the backup storage device are part of a storage array network, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 15, Woodhill discloses that software algorithm is stored in a memory associated with the controller, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 16, Woodhill discloses that fiber channel controller coupled between the controller and the input/output port which comprises an optical transceiver, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 17, Woodhill discloses that Ethernet controller coupled between the controller and the input/output port which comprises an ethernet transceiver, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 18, Woodhill discloses that the array of hard drives array of hard drives and the controller, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

With respect claim 21-22, Woodhill discloses that storage attached network or network attached storage configuration through client network, see (fig. 1, fig. 2, col. 3, lines 7-67 to col. 4, lines 1-47).

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Duwe et al (U.S. Patent No. 6,718,466) discloses the system for producing data media, and for providing such data media, by means of which both the need for reinstallation and the time required for restoring a given content to its pre-incompatibility

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state are minimized, this invention proposes a method for producing such a data medium with a restorable original base data content, whereby, in a section of the data medium designated as the active-data zone, an original base data content is generated, a separate section of the data medium is designated as the recovery zone, and a retrievable backup copy is saved from the active-data zone into the recovery zone.

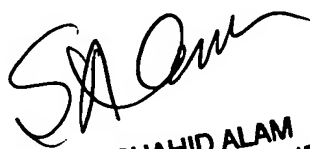
Contact Information

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isaac M Woo whose telephone number is (703) 305-0081. The examiner can normally be reached on 8:00-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E Breene can be reached on (703) 305-9790. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IMW
June 23, 2004


SHAHID ALAM
PRIMARY EXAMINER